

DOING BUSINESS IN THE UNITED ARAB EMIRATES

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I INTRODUCTION

The United Arab Emirates (UAE) is a federation of seven Emirates that was formed by Abu Dhabi, Ajman, Dubai, Fujairah, Sharjah and Umm Al Quwain following the end of the British protectorate over the 'Trucial States' in 1971. The Emirate of Ras Al Khaimah joined the federation the following year.

Like its neighbours in the Arabian Gulf, the UAE is primarily known as a petroleum-producing economy which has achieved tremendous economic and social development in the last two decades. Most of the UAE's petroleum reserves are located in Abu Dhabi Emirate. Whilst the petroleum sector has dominated economic development in the UAE, attempts are being made to diversify into other sectors. Although the country is a federation, the member Emirates largely pursue their own policies. The Emirate of Dubai in particular is positioning itself as a regional trade centre and transportation hub and is rapidly developing into a tourist destination.

The UAE Constitution apportions powers between the Federal government (based in Abu Dhabi) and the governments of the constituent emirates. Some fields are regulated only at the federal level (such as, for example, immigration and labour relations) although local interpretations and practices sometimes differ from one Emirate to another. Other matters are regulated only at the emirate level (for example, each emirate retains sovereignty over its own natural resources – including its petroleum reserves). Still other matters are regulated at both the emirate and federal levels. Company formation is an example of a field where both the emirate and federal authorities have important roles.

This summary provides a brief overview of certain key issues relevant to a foreign investor intent on having a business presence in the UAE. In each case (other than establishing a presence in a Free Zone) the involvement of a UAE national – whether as agent or partner – will be essential.

II FORMAL PRESENCE

A Branch offices

Foreign companies are permitted to establish wholly-owned branch offices in the UAE. Branch offices are generally not permitted either to import goods for resale in the UAE, or to perform domestic trading activities, manufacturing or other activities which are reserved for UAE citizens or locally incorporated companies. Many foreign companies

have established 'representative offices'. These offices are branch offices which do not perform commercial activities, but which serve as regional administrative centres and/or provide marketing or other support. Branch offices are also a common vehicle for foreign EPC contractors and contractors in certain other service sectors in the UAE.

A branch office licence permits the holder to open and operate bank accounts, to lease office and residential premises, to sponsor residence visas and labour permits for expatriate employees and to take other actions within the scope of the licensed objectives.

Establishing a branch office entails, among other things, appointing a 'national agent' who is a UAE citizen. A national agent has no equity or management interest in the branch office and does not bear any of its liabilities. His compensation is an annual fee stipulated in the sponsorship agreement.

Branch offices are subject to the Federal Companies Law and are regulated at the federal level by the Ministry of Economy & Commerce (the 'MEC'). In addition, branch offices are regulated at the local emirate level. In Abu Dhabi, branch office licences are issued by the Abu Dhabi Municipality, but approval from other Abu Dhabi governmental entities is required. In Dubai, the Department of Economic Development (the 'DED') handles branch office licensing. The DED currently takes the position that certain activities which it deems to be 'professional' (as opposed to 'commercial') may be licensed at the DED level without reference to the MEC, thereby streamlining the licensing process for such activities. For such 'professional' licences (which are available to foreign company representative offices in Dubai), a 'local services agent' is required. The 'local services agent' is equivalent to the 'national agent' and the term 'sponsor' is commonly used interchangeably with both terms.

B Limited liability companies

Foreign investors are permitted to hold equity in companies incorporated in the UAE, subject to a minimum 51 per cent UAE national ownership requirement. The Federal Companies Law (UAE Federal Law No 8 of 1984 Concerning Commercial Companies, as amended) recognises seven types of companies.

However, the preferred vehicle for foreign equity investments in the UAE is the limited liability company (LLC) due to (among other factors) the LLC's flexible management structure, the availability of minority shareholder protections and the ease of formation. Although LLCs are subject to the Federal Companies Law, the MEC does not have a substantive role in the licensing of LLCs and such licensing is primarily handled at the local emirate level (in Abu Dhabi by the Abu Dhabi Municipality and in Dubai by the DED). A separate consent from the Federal Ministry of Finance & Industry ('MFI') may be required for LLCs engaging in industrial activities.

The shareholding company (roughly equivalent to an American corporation or a European 'société anonyme') is not a popular vehicle among foreign investors due to, among other things, (i) a high minimum capital investment, (ii) a lack of protection for minority shareholder interests, (iii) the relative inflexibility and high degree of regulation associated with the corporate structure. However, for a variety of reasons, emirate

governments have been encouraging the formation of shareholding companies in certain high-profile projects. This is particularly apparent in Abu Dhabi, where shareholding companies have been used for major infrastructure projects under both the Offsets and IWPP programmes. The MEC has a major role in the licensing of shareholding companies. Local authorities and other Federal authorities also have a role in the licensing process, depending on the nature of the activity; for example, banks and financial institutions require approval from the UAE Central Bank, shipping related businesses require the approval of the Ports Department, businesses in the medical field require the approval of the Department of Health, etc.

C Free Zone operations

There are various free zones in the UAE, the most prominent of which is the Jebel Ali Free Zone, Dubai. Other major free zones include the Dubai Airport Free Zone and Dubai Internet City, Dubai Media City in Dubai, the Saadiyaat Free Zone in Abu Dhabi and the Hamriyah Free Zone and the Sharjah Airport Free Zone in Sharjah.

Foreign companies are permitted to establish wholly-owned branches in each of these free zones, and such branches are exempt from the requirement to appoint a national agent (sponsor). Local legislation in each of the free zones also permits the incorporation of corporate entities which exist and operate outside the purview of the Federal Companies Law and which do not require the involvement of a UAE national shareholder. The establishment of a free zone branch or a corporate entity is handled by the relevant free zone authority.

A variety of trading, distribution, warehousing and manufacturing operations may be performed in the free zones. UAE customs duties are not applied on goods brought into a free zone unless and until such goods are imported into the UAE proper.

III INFORMAL PRESENCE

AGENCIES, DISTRIBUTORSHIPS AND FRANCHISES

Many foreign companies offer their goods and services to consumers in the UAE through local agents and distributors. As it is generally difficult for a foreign company to obtain a licence to engage in distribution and domestic trading, the sale of products to resellers or distributors is often the only practical way to penetrate the UAE market for certain types of goods.

UAE Federal Law No 18 of 1981 Concerning Commercial Agencies, as amended (the 'Federal Commercial Agencies Law'), governs the relationship between foreign manufacturers and local agents and distributors. The Federal Commercial Agencies Law offers significant protections to the local party if the agency is registered with the MEC. In order to register, the agent/distributor must be a UAE national or a company wholly-owned by UAE nationals. The statutory protections flowing from registration include, among other things, exclusivity, restrictions on the foreign party's right to terminate or withhold renewal of the relationship, and the right to receive compensation on termination or non-renewal of the relationship. Although there are a number of

disadvantages to registration of an agency from the foreign party's perspective, certain governmental agencies can insist on dealing with registered agents.

Franchising is an increasingly popular business structure in the UAE. Most of the major fast-food chains have entered the UAE market through franchise relationships. In addition, a number of internationally known retailers have adopted the franchise model for their UAE outlets. The UAE authorities take the position that the Federal Commercial Agencies Law applies to franchise relationships.

IV COURTS AND DISPUTE RESOLUTION

The UAE Constitution provides for a federal court system, but acknowledges the right of each constituent emirate to maintain an independent court system. Currently, the emirates of Abu Dhabi, Sharjah, Ajman, Fujairah and Umm Al Quwain have joined the federal court system. The emirates of Dubai and Ras Al Khaimah each maintain separate court systems. Rules of evidence and court procedure, however, are governed by federal laws which apply in all seven emirates.

There are three levels to the federal court system. The Federal Courts of First Instance are trial courts and are located in each major city in the federal court system. There are three principal divisions to the Courts of First Instance: civil, criminal and *Shari'a* (Islamic). The *Shari'a* division has jurisdiction over matters of personal status (marriage, divorce and inheritance) and, in cases involving non-Muslims, are required to apply the religious or civil law of the parties. The *Shari'a* division was recently given jurisdiction over certain criminal matters, including drug offences and offences involving minors. The criminal division handles other criminal cases. The civil division handles all other matters, including commercial disputes and labour law disputes.

Decisions of a Court of First Instance may be appealed to one of the Federal Courts of Appeal, which are located in Abu Dhabi and Sharjah. Questions of law and certain other matters may be appealed to the Federal Supreme Court, located in Abu Dhabi.

The structure of the Dubai court system largely parallels that of the federal system, except that the highest court in Dubai is called the Court of Cassation.

Court proceedings in the UAE are often time-consuming. There are no juries, and cases are heard by a single judge or a three-judge panel, depending on the nature of the dispute. Cases proceed on the basis of written pleadings submitted by advocates at a series of brief hearings stretching over a period of months. Hearings are in Arabic and are normally open to the public. While allowed under the procedural rules, civil courts infrequently entertain oral testimony by witnesses. All evidence submitted to the court must be in Arabic.

Some, but not all, decisions of the Federal Supreme Court and the Dubai Court of Cassation are reported in publications issued sporadically by the government authorities. Most decisions of the lower courts are not reported. There is no system of binding precedent.

V TAXES AND EXCHANGE CONTROLS

No corporate income tax is imposed at the federal or emirate level, except with respect to branches of foreign banks (at the emirate level) and courier companies (at the federal level). Emirate-level taxes are imposed on the holders of petroleum concessions at rates specifically negotiated in the relevant concession agreements. There is no personal income tax.

Dubai, and certain other emirates, impose taxes on some goods and services (including, for example, sales of alcoholic beverages, hotel and restaurant bills and residential leases). However, there is no sales tax or VAT of general applicability in the UAE

There are no currency exchange controls and no restrictions on the remittance of funds, except for restrictions on transactions involving Israeli parties or currency.

VI IMMIGRATION, LABOUR AND EMPLOYMENT

Foreigners present in the UAE require a visa. Visas are available for business or tourist visits, transit (which is a stay of up to 14 days) or for residence.

Currently, UK passport holders may obtain visit visas upon arrival at the airport, while US passport holders may obtain visit visas from any UAE Embassy abroad upon a faxed letter of invitation from a UAE citizen or resident. Special visa facilities are also available for citizens and residents of GCC countries. In all other circumstances, a visa must be arranged in advance by a 'sponsor' in the UAE. The sponsor for a visa is not the same as a national agent (the 'sponsor' for a branch office). Generally speaking, a company with a valid business licence (including a foreign company branch office or subsidiary) may sponsor visit and transit visas for visiting staff and business contacts. Expatriates residing in the UAE may sponsor visit and residence visas for family members, subject to certain minimum income requirements. Hotels may also act as sponsors and arrange visas for their guests.

Residence visas are linked to employment. In order to obtain a residence visa, an expatriate must enter into an employment contract with an entity duly licensed in the UAE. The employment contract must be registered with the Federal Ministry of Labour & Social Affairs (the 'MOL'). The employment relationship is governed by UAE Federal Law No 8 of 1980 Regulating Labour Relations, as amended (the 'Federal Labour Law'). The Federal Labour Law imposes certain minimum standards on termination, working hours, vacation time, safety standards and other issues. The Federal Labour Law contemplates minimum wage guidelines, but there are currently no minimum wage requirements. Trade unions and collective bargaining are not permitted, and employee grievances are handled through a conciliation process administered by the MOL. Government employees and domestic servants are exempt from the Federal Labour Law and, because employees of free zone branches and FZEs are deemed to be government employees (being employed on record by the free zone authority and seconded to the licensee) the Federal Labour Law does not apply to such employees.

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